

111TH CONGRESS
2D SESSION

H. R. 6334

To amend the Community Reinvestment Act of 1977 to improve the assessments of regulated financial institutions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2010

Mr. GUTIERREZ (for himself, Ms. WATERS, Mr. AL GREEN of Texas, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Community Reinvestment Act of 1977 to improve the assessments of regulated financial institutions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Community
5 Investment Reform Act of 2010”.

6 **SEC. 2. COMMUNITY REINVESTMENT ACT AMENDMENTS.**

7 (a) FINDINGS AND PURPOSE.—Section 802 of the
8 Community Reinvestment Act of 1977 (12 U.S.C. 2901)
9 is amended to read as follows:

1 **“SEC. 802. FINDINGS AND PURPOSE.**

2 “(a) FINDINGS.—The Congress finds that—

3 “(1) regulated financial institutions are re-
4 quired by law to demonstrate that they serve the
5 convenience and needs of the communities in which
6 they are chartered or do business;

7 “(2) the convenience and needs of communities
8 include the need for credit services, deposit services,
9 transaction services, and community development
10 loans and investments; and

11 “(3) regulated financial institutions have a con-
12 tinuing and affirmative obligation to help meet the
13 credit or other financial needs of the local commu-
14 nities in which they are chartered or do business.

15 “(b) PURPOSE.—It is the purpose of this title to re-
16 quire each appropriate Federal financial supervisory agen-
17 cy to use its authority when examining regulated financial
18 institutions, to encourage such institutions to help meet
19 the credit or other financial needs of the local communities
20 in which they are chartered or do business consistent with
21 the safe and sound operation of such institutions.”.

22 (b) DEFINITIONS.—Section 803 of such Act (12
23 U.S.C. 2902) is amended to read as follows:

24 **“SEC. 803. DEFINITIONS.**

25 “For purposes of this title:

1 “(1) APPROPRIATE FEDERAL FINANCIAL SU-
2 PERVISORY AGENCY.—The term ‘appropriate Fed-
3 eral financial supervisory agency’ means—

4 “(A) the appropriate Federal banking
5 agency with respect to depository institutions
6 and depository institution holding companies, as
7 those terms are defined under section 3 of the
8 Federal Deposit Insurance Act;

9 “(B) the Securities and Exchange Commis-
10 sion with regard to—

11 “(i) any U.S. nonbank financial com-
12 pany for which the Securities and Ex-
13 change Commission acts as the primary fi-
14 nancial regulatory agency pursuant to sec-
15 tion 2 of the Dodd-Frank Wall Street Re-
16 form and Consumer Protection Act; and

17 “(ii) any broker or dealer that is a
18 member of the Securities Investor Protec-
19 tion Corporation;

20 “(C) the Bureau of Consumer Financial
21 Protection with respect to any covered person
22 supervised by the Bureau pursuant to section
23 1024 of the Dodd-Frank Wall Street Reform
24 and Consumer Protection Act; and

1 “(D) the Board of Governors of the Fed-
2 eral Reserve System with respect to—

3 “(i) securities holding companies, as
4 defined under section 618 of the Dodd-
5 Frank Wall Street Reform and Consumer
6 Protection Act; and

7 “(ii) in consultation with the primary
8 financial regulatory agency (as such term
9 is defined under section 2 of the Dodd-
10 Frank Wall Street Reform and Consumer
11 Protection Act), any regulated financial in-
12 stitution not described in subparagraph
13 (A), (B), or (C) or clause (i).

14 “(2) CAPITAL DISTRIBUTION.—The term ‘cap-
15 ital distribution’ means—

16 “(A) a distribution of cash or other prop-
17 erty by any regulated financial institution to its
18 owners made on account of that ownership;

19 “(B) a payment by a regulated financial
20 institution to repurchase, redeem, retire, or oth-
21 erwise acquire any of its shares or other owner-
22 ship interests, including any extension of credit
23 to finance an affiliated company’s acquisition of
24 those shares or interests; and

1 “(C) a transaction that the appropriate
2 Federal financial supervisory agency deter-
3 mines, by order or regulation, to be in sub-
4 stance a distribution of capital to the owners of
5 the regulated financial institution.

6 “(3) COMMUNITY DEVELOPMENT.—The term
7 ‘community development’ means—

8 “(A) affordable housing for low- (including
9 extremely low-income) or moderate-income indi-
10 viduals (including multifamily rental housing
11 and properties awarded low-income housing tax
12 credits under section 42(h) of the Internal Rev-
13 enue Code of 1986);

14 “(B) community and financial services tar-
15 geted to low- or moderate-income individuals,
16 including appropriate electronic payments, basic
17 account activities, and successful mortgage or
18 loan modifications;

19 “(C) activities that promote economic de-
20 velopment by financing businesses or farms
21 that—

22 “(i) meet the size eligibility require-
23 ments of the Small Business Administra-
24 tion’s Development Company or the Small
25 Business Investment Company programs

1 under section 121.301 of title 13, Code of
2 Federal Regulations; or

3 “(ii) have gross annual revenues of
4 \$1,000,000 or less; or

5 “(D) activities that revitalize or stabilize—

6 “(i) low- or moderate-income geog-
7 raphies;

8 “(ii) designated disaster areas;

9 “(iii) distressed or underserved non-
10 metropolitan middle-income geographies
11 designated by the Board of Governors of
12 the Federal Reserve System, the Federal
13 Deposit Insurance Corporation, and the
14 Office of the Comptroller of the Currency,
15 based on—

16 “(I) rates of poverty, unemploy-
17 ment, and population loss; or

18 “(II) population size, density,
19 and dispersion, if such activities help
20 to meet essential community needs,
21 including needs of low- and moderate-
22 income individuals; or;

23 “(iv) activities conducted by certified
24 community development financial institu-
25 tions (as such term is defined under sec-

tion 103(5) of the Community Development Banking and Financial Institutions Act of 1994).

“(4) REGULATED FINANCIAL INSTITUTION.—

“(A) IN GENERAL.—The term ‘regulated financial institution’ means an insured depository institution (as defined under section 3 of the Federal Deposit Insurance Act), a depository institution holding company (as defined under section 3 of the Federal Deposit Insurance Act), and a U.S. nonbank financial company.

“(B) RULE OF CONSTRUCTION.—The term ‘regulated financial institution’ does not include a credit union.

“(5) APPLICATION FOR A DEPOSIT FACILITY.—

The term ‘application for a deposit facility’ means an application to the appropriate Federal financial supervisory agency otherwise required under Federal law or regulations thereunder for—

“(A) a charter for a national bank or Federal savings and loan association;

“(B) deposit insurance in connection with a newly chartered State bank, savings bank,

1 savings and loan association or similar institu-
2 tion;

3 “(C) the establishment of a domestic
4 branch or other facility with the ability to ac-
5 cept deposits of a regulated financial institu-
6 tion;

7 “(D) the relocation of the home office or a
8 branch office of a regulated financial institu-
9 tion;

10 “(E) the merger or consolidation with, or
11 the acquisition of the assets, or the assumption
12 of the liabilities of a regulated financial institu-
13 tion requiring approval under section 18(c) of
14 the Federal Deposit Insurance Act or under
15 regulations issued under the authority of title
16 IV of the National Housing Act; or

17 “(F) the acquisition of shares in, or the as-
18 sets of, a regulated financial institution requir-
19 ing approval under section 3 of the Bank Hold-
20 ing Company Act of 1956 or section 408(e) of
21 the National Housing Act.

22 “(6) U.S. NONBANK FINANCIAL COMPANY.—
23 The term ‘U.S. nonbank financial company’ has the
24 meaning given such term under section 102 of the

1 Dodd-Frank Wall Street Reform and Consumer Pro-
2 tection Act.

3 “(7) GEOGRAPHY.—The term ‘geography’
4 means a census tract delineated by the United
5 States Bureau of the Census in the most recent de-
6 cennial census.

7 “(8) ENTIRE COMMUNITY.—With respect to a
8 financial institution whose business predominately
9 consists of serving the needs of military personnel
10 who are not located within a defined geographic
11 area, such institution may define its ‘entire commu-
12 nity’ to include its entire deposit customer base
13 without regard to geographic proximity.”.

14 (c) EVALUATIONS.—Section 804 of such Act (12
15 U.S.C. 2903) is amended—

16 (1) by redesignating subsections (c) and (d) as
17 subsections (e) and (f), respectively;

18 (2) by striking subsections (a) and (b) and in-
19 serting the following new subsections:

20 “(a) DEPOSITORY INSTITUTIONS AND DEPOSITORY
21 INSTITUTION HOLDING COMPANIES.—In connection with
22 its examination of a regulated financial institution other
23 than a U.S. nonbank financial company, the appropriate
24 Federal financial supervisory agency shall do the fol-
25 lowing:

1 “(1) Assess the institution’s record of meeting
2 the credit or other financial needs of its entire com-
3 munity, including low-income, moderate-income, and
4 other traditionally underserved neighborhoods, con-
5 sistent with the safe and sound operation of such in-
6 stitution.

7 “(2) Assess, with at least an equal weight to
8 any other factor or test identified in the regulations
9 prescribed by the appropriate Federal financial su-
10 pervisory agency to implement this Act, the commu-
11 nity development activities and those activities’ effec-
12 tiveness in meeting the financial needs of an institu-
13 tion’s entire community, including low- and mod-
14 erate-income neighborhoods, consistent with the safe
15 and sound operation of such institution.

16 “(3) Assess the following activities and those
17 activities’ effectiveness in meeting the credit or other
18 financial needs of an institution’s entire community,
19 including low- and moderate-income neighborhoods,
20 consistent with the safe and sound operation of such
21 institution, unless the appropriate Federal financial
22 supervisory agency determines that such assessment
23 is not appropriate for a given regulated financial in-
24 stitution or class of regulated financial institutions

1 because it engages in limited activities or is of a lim-
2 ited size:

3 “(A) Lending activities other than loans
4 considered under paragraph (1).

5 “(B) Investment activities other than in-
6 vestments considered under paragraph (1).

7 “(C) Retail financial services other than
8 community development services considered
9 under paragraph (1).

10 “(4) Take such record into account in its eval-
11 uation of an application for a deposit facility by such
12 institution.

13 “(b) U.S. NONBANK FINANCIAL COMPANIES.—The
14 appropriate Federal financial supervisory agency shall as-
15 sess the community development activities, including in-
16 vestments and loans where appropriate that benefit the
17 community of the company, and those activities’ effective-
18 ness in meeting the credit or other financial needs of its
19 entire community, including low-income, moderate-income,
20 and other traditionally underserved neighborhoods, as ap-
21 propriate for the given regulated financial institution con-
22 sistent with the safe and sound operation of such com-
23 pany.

24 “(c) REQUIREMENTS.—

1 “(1) IN GENERAL.—In connection with its ex-
2 amination of a regulated financial institution under
3 subsection (a) or (b), the appropriate Federal finan-
4 cial supervisory agency shall—

5 “(A) take into consideration public com-
6 ment received by the appropriate Federal finan-
7 cial supervisory agency regarding the institu-
8 tion’s record of meeting the credit or other fi-
9 nancial needs of its entire community, including
10 low-income, moderate-income, and other tradi-
11 tionally underserved neighborhoods; and

12 “(B) require an improvement plan for an
13 institution that receives a ‘Needs to improve
14 record of meeting community credit or other fi-
15 nancial needs’ or a ‘Substantial noncompliance
16 in meeting community credit or other financial
17 needs’ rating on the institution’s written evalua-
18 tion, or such a rating in any individual assess-
19 ment area, and require such improvement plan
20 to result in the reasonable likelihood that the
21 institution will obtain a rating of at least ‘Satis-
22 factory record of meeting community credit or
23 other financial needs’ in the relevant measure
24 within 2 exam cycles.

25 “(2) IMPROVEMENT PLAN.—

1 “(A) IN GENERAL.—A regulated financial
2 institution required to submit an improvement
3 plan required under paragraph (1)(B) shall
4 submit such plan in writing to the appropriate
5 Federal financial supervisory agency no later
6 than 60 days after receiving the notice that
7 such plan will be required.

8 “(B) PUBLIC COMMENT.—Upon receipt of
9 an improvement plan required under paragraph
10 (1)(B), the appropriate Federal financial super-
11 visory agency shall—

12 “(i) make the plan available to the
13 public for review and comment for a period
14 of no less than 30 days; and

15 “(ii) require the regulated financial
16 institution to revise, as appropriate, the
17 improvement plan in response to the public
18 comments received under the public review
19 and comment period described under
20 clause (i) and submit such plan to the ap-
21 propriate Federal financial supervisory
22 agency no later than 30 days after the end
23 of such period.

24 “(3) LIMITATION.—Public comment received
25 pursuant to paragraph (2)(B) shall be limited to

1 comments that directly address the regulated finan-
2 cial institution's record of meeting the credit or
3 other financial needs of the entire community, in-
4 cluding low-income, moderate-income, and other tra-
5 ditionally underserved neighborhoods.

6 “(d) NONMINORITY OWNED AND NON-CDFI INSTI-
7 TUTION INVESTMENTS.—In assessing and taking into ac-
8 count, under subsections (a), (b), and (c), the record of
9 a regulated financial institution that is a nonminority-
10 owned, nonwomen-owned institution and that is not a cer-
11 tified community development financial institution, the ap-
12 propriate Federal financial supervisory agency may con-
13 sider as a factor capital investment, loan participation,
14 and other ventures undertaken by the regulated financial
15 institution in cooperation with certified community devel-
16 opment financial institutions, minority- and women-owned
17 financial institutions, and low-income credit unions, pro-
18 vided that these activities help meet the credit or other
19 financial needs of local communities in which such institu-
20 tions and credit unions operate, including communities
21 other than where such institutions and credit unions oper-
22 ate, if the regulated financial institution has adequately
23 met the needs of its local assessment area.”;

24 (3) by adding at the end the following new sub-
25 sections:

1 “(g) COMPLEX AND INNOVATIVE EFFORTS.—In as-
 2 sessing and taking into account, under subsection (a), the
 3 record of a regulated financial institution, the appropriate
 4 Federal financial supervisory agency shall consider, as a
 5 factor, the complexity, innovativeness, effectiveness in
 6 meeting particularly difficult community needs, or signifi-
 7 cant effort extended in specific loans, investments, or serv-
 8 ices.

9 “(h) RULE OF CONSTRUCTION.—An evaluation of a
 10 depository institution holding company shall incorporate
 11 evaluations of subsidiary regulated financial institutions
 12 made by each subsidiary’s appropriate Federal financial
 13 supervisory agency, if applicable.”.

14 (d) WRITTEN EVALUATIONS.—Section 807 of such
 15 Act (12 U.S.C. 2906) is amended—

16 (1) in subsection (a)—

17 (A) by striking “an insured depository in-
 18 stitution” and inserting “a regulated financial
 19 institution”; and

20 (B) by inserting “or financial” after “cred-
 21 it”;

22 (2) in subsection (b)—

23 (A) in paragraph (1)—

24 (i) in subparagraph (A)—

1 (I) in clause (ii), by striking
2 “and” at the end;

3 (II) by redesignating clause (iii)
4 as clause (v); and

5 (III) by inserting after clause (ii)
6 the following new clauses:

7 “(iii) disclose whether the institution
8 provided, or offered to provide, a consumer
9 financial product that the Bureau of Con-
10 sumer Financial Protection has determined
11 is unfair, deceptive, or abusive;

12 “(iv) include specific responses to
13 public comments received by the Federal
14 financial supervisory agency regarding the
15 institution; and”; and

16 (ii) by adding at the end the following
17 new subparagraph:

18 “(C) TREATMENT WITH RESPECT TO UN-
19 FAIR, DECEPTIVE, OR ABUSIVE CONSUMER FI-
20 NANCIAL PRODUCTS.—If the regulated financial
21 institution provided, or offered to provide, one
22 or more consumer financial products that the
23 Bureau of Consumer Financial Protection has
24 determined is unfair, deceptive, or abusive, the
25 written evaluation shall be negatively influenced

1 in a manner commensurate with the extent to
 2 which such product or products were offered or
 3 provided.”;

4 (B) in paragraph (2)—

5 (i) by striking “paragraph (1)(C)”
 6 and inserting “paragraph (1)(A)(v)”; and

7 (ii) by striking subparagraphs (A),
 8 (B), (C), and (D) and inserting the fol-
 9 lowing:

10 “(A) ‘Satisfactory record of meeting com-
 11 munity credit or other financial needs’.

12 “(B) ‘Sufficient record of meeting commu-
 13 nity credit or other financial needs’.

14 “(C) ‘Needs to improve record of meeting
 15 community credit or other financial needs’.

16 “(D) ‘Substantial noncompliance in meet-
 17 ing community credit or other financial
 18 needs’.”; and

19 (C) by inserting after paragraph (2) the
 20 following new paragraph:

21 “(3) APPLICATION FOR OUTSTANDING RAT-
 22 ING.—

23 “(A) IN GENERAL.—The appropriate Fed-
 24 eral financial supervisory agencies shall develop
 25 and implement a process to permit a regulated

1 financial institution to submit an application at
2 the time the examination process is initiated for
3 a rating of ‘Outstanding record of meeting com-
4 munity credit or other financial needs’.

5 “(B) AVAILABILITY OF RATING.—

6 “(i) IN GENERAL.—The rating de-
7 scribed under subparagraph (A) shall only
8 be awarded to a regulated financial institu-
9 tion that—

10 “(I) applies for such rating pur-
11 suant to subparagraph (A);

12 “(II) significantly exceeds the re-
13 quirements to receive the rating de-
14 scribed under paragraph (2)(A);

15 “(III) with respect to a regulated
16 financial institution for which ratings
17 are available for the three most recent
18 examination cycles, received no less
19 than a ‘Satisfactory record of meeting
20 community credit or other financial
21 needs’ or, for evaluations prior to the
22 date of the enactment of the Amer-
23 ican Community Investment Reform
24 Act of 2010, ‘Satisfactory record of
25 meeting community credit needs’, for

1 the three most recent examination cy-
2 cles; and

3 “(IV) with respect to a deposi-
4 tory institution holding company or a
5 regulated financial institution that
6 controls one or more other regulated
7 financial institutions, does not have a
8 subsidiary regulated financial institu-
9 tion that received a rating of ‘Needs
10 to improve record of meeting commu-
11 nity credit or other financial needs’ or
12 less, or, for evaluations prior to the
13 date of enactment of the American
14 Community Investment Reform Act of
15 2010, a rating of ‘Needs to improve
16 record of meeting community credit
17 needs’ or lower for the most recent ex-
18 amination cycle.

19 “(ii) RULE OF CONSTRUCTION.—For
20 purposes of clause (i)(IV), a rating given
21 to a regulated financial institution prior to
22 the control of such regulated financial in-
23 stitution by the relevant depository institu-
24 tion holding company or parent regulated
25 financial institution as a subsidiary shall

1 not bar the company from being granted a
 2 rating of ‘Outstanding record of meeting
 3 community credit or other financial needs’.

4 “(C) EXPANDED ASSESSMENT AREA.—For
 5 purposes of determining whether to award a
 6 rating described under subparagraph (A), the
 7 appropriate Federal financial supervisory agen-
 8 cy may consider community development activi-
 9 ties, including investments made outside the in-
 10 stitution’s service area if the regulated financial
 11 institution has adequately met the needs of its
 12 local assessment area.”;

13 (3) by redesignating subsections (d) and (e) as
 14 subsections (f) and (g), respectively; and

15 (4) by inserting after subsection (c) the fol-
 16 lowing new subsections:

17 “(d) PRELIMINARY REPORT REQUIRED.—

18 “(1) IN GENERAL.—The appropriate Federal fi-
 19 nancial supervisory agency shall—

20 “(A) prepare a preliminary report of the
 21 public section of the evaluation required under
 22 paragraph (a)(1); and

23 “(B) provide the preliminary report to the
 24 regulated financial institution and to the public

1 not less than 60 days before the date on which
2 the corresponding written evaluation is issued.

3 “(2) LIMITATION.—The preliminary report re-
4 quired under paragraph (1) shall not include any as-
5 signed rating or discussion of an assigned rating.

6 “(e) PUBLIC COMMENT ON PRELIMINARY REPORT.—
7 The appropriate Federal financial supervisory agency
8 shall—

9 “(1) develop and implement a process to seek
10 and receive public comment on any preliminary re-
11 port for a period of 30 days following the release of
12 the report; and

13 “(2) incorporate into a revised written evalua-
14 tion any public comment received during such com-
15 ment period, as appropriate.”.

16 (e) EFFECTS OF ASSIGNED RATINGS.—Such Act is
17 amended by adding at the end the following new section:

18 **“SEC. 810. EFFECTS OF ASSIGNED RATINGS.**

19 “(a) OUTSTANDING RATING.—A regulated financial
20 institution that receives a rating of ‘outstanding record of
21 meeting community credit or other financial needs’ on its
22 most recent performance evaluation shall—

23 “(1) be presumed to have satisfied consider-
24 ation of such regulated financial institution’s record
25 of meeting the credit or other financial needs of its

1 entire community in an application for a deposit fa-
2 cility; and

3 “(2) be given preference over other regulated fi-
4 nancial institutions with lower ratings in connection
5 with the award of Government contracts.

6 “(b) SATISFACTORY RATING.—There shall be a re-
7 buttable presumption that a regulated financial institution
8 that receives a rating of ‘satisfactory record of meeting
9 community credit or other financial needs’ on its two most
10 recent performance evaluations will have satisfied consid-
11 eration of such regulated financial institution’s record of
12 meeting the credit or other financial needs of its entire
13 community in an application for a deposit facility.

14 “(c) NEEDS TO IMPROVE RATING.—A regulated fi-
15 nancial institution that receives a rating of ‘needs to im-
16 prove record of meeting community credit or other finan-
17 cial needs’ or lower on its two most recent performance
18 evaluations shall be prohibited from—

19 “(1) being awarded a Government contract in
20 an amount greater than \$500,000, unless such Fed-
21 eral department or agency proposing to enter into
22 such contract determines that compliance with such
23 prohibition imposes an undue burden or is unable to
24 meet its needs with another institution; and

1 “(2) making any capital distributions in the ag-
2 gregate during any calendar quarter that exceed 50
3 percent of its net earnings during the previous quar-
4 ter without the prior approval of its appropriate
5 Federal financial supervisory agency.

6 “(d) SUBSTANTIAL NONCOMPLIANCE.—A regulated
7 financial institution that receives a ‘substantial noncompli-
8 ance in meeting community credit or other financial needs’
9 rating on its most recent performance evaluations—

10 “(1) may be ordered to restrict executive com-
11 pensation by its appropriate Federal financial super-
12 visory agency;

13 “(2) shall be prohibited from being awarded a
14 Government contract, unless such Federal depart-
15 ment or agency proposing to enter into such con-
16 tract determines that compliance with such prohibi-
17 tion imposes an undue burden or is unable to meet
18 its needs with another institution; and

19 “(3) shall be prohibited from making any cap-
20 ital distributions without the prior approval of its
21 appropriate Federal financial supervisory agency.”.

○